SEP 4 1982

Y 1.1/8:97-808

ORIGINAL

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 97-808

COMPLETED

31 ABOLITION OF DIVERSITY OF CITIZENSHIP JURISDICTION

SEPTEMBER 15, 1982.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

---

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

WITH DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 6816]

The Committee on the Judiciary to whom was referred the bill (H.R. 6816) to abolish diversity of citizenship as a basis of jurisdiction of Federal district courts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the proposed legislation is to abolish the invocation of Federal court jurisdiction based solely on diversity of citizenship. Diversity of citizenship jurisdiction refers to the jurisdiction of the Federal courts to hear matters, involving no Federal law questions, when citizens of different states are opposing parties. Diversity jurisdiction is provided for statutorily in 28 U.S.C. 1332. The Supreme Court has held in *Strawbridge* v. *Curtiss*, 7 U.S. (3 Branch) 267 (1806), that there must be complete diversity between the parties before Federal jurisdiction is available. The bill retains alienage jurisdiction and statutory interpleader.

Eighteen years ago, in 1959, Chief Justice Earl Warren, in an address to the American Law Institute, observed: "It is essential that we achieve a proper jurisdictional balance between the Federal and State court systems, in the light of the basic principles of federalism." The proposed legislation achieves that goal. As a general proposition, it provides that Federal law questions are to be adjudicated in the Federal courts, and diversity cases, which involve questions of State law, are to be resolved in the State courts.

97-962 O

The bill eliminates the luxurious, and basically illogical, mechanism of providing the choice of a Federal or State forum for diversity of citizenship cases due to the possibility of prejudice against those from out of State.

BACKGROUND

Federal diversity of citizenship jurisdiction is made possible by article III of the Constitution which permits, but does not mandate, Federal court jurisdiction based on "controversies between citizens of different States" and "between a State, or the citizens thereof, and foreign States, citizens or subjects." The framers did not make this grant self-executing. Article III also provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The net-result is that, Federal court jurisdiction is largely permissive. The Constitution does not even mandate the creation of inferior Federal courts. As relates to diversity jurisdiction, the Constitution grants to Congress the power to decide whether, and to what extent, it should exist.[1]

---

[1] As the American Bar Association has written:

"We do not question Congress' authority to make the decision as to what role diversity jurisdiction should play in our judicial system. The ABA acknowledges that Congress constitutionally has a great discretion in deciding the diversity jurisdiction question. It could give federal courts diversity jurisdiction to the fullest extent possible; it could do away with diversity jurisdiction; it could bar in-state plaintiff diversity jurisdiction. So long as Congress applies a neutral standard of allocation, its discretion is unrestricted." (Letter from Robert D. Evans to Representative Robert W. Kastenmeier, July 12, 1982 at 2.)

This view is more completely explained by a letter from Professor Lawrence Sager of the New York University Law School to Congressman Kastenmeier, set forth below:

N.Y.U. SCHOOL OF LAW,
New York, N.Y.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: At the request of your staff, I am writing to discuss Congress' authority to abolish diversity jurisdiction, and the reach of that authority to other proposals to limit the jurisdiction of the federal courts.

The language, structure and history of Article III of the Constitution indicate that Congress has broad power to regulate the jurisdiction of the federal courts. The lower federal courts take their jurisdiction from statutory grants by Congress, and Congress can withhold from their jurisdiction portions of the reservoir of jurisdiction provided in section 2 of Article III. In contrast, the existence of the Supreme Court is stipulated by Article III, and the whole of the jurisdiction specified in section 2 is constitutionally conferred on the Court. The appellate jurisdiction of the Supreme Court, however, is provided in Article III "with such Exceptions and under such Regulations as the Congress shall make", and Congress can remove from the jurisdiction of the Court some of the cases that fall within section 2.

But from Article III, and from the logic of the constitutional scheme of which it is a pivotal part, there flow significant limitations on the resulting power of Congress to regulate the jurisdiction of the federal courts. This power is limited by three important constitutional principles:

(1) The Supreme Court must be available to superintend federal, state, and local compliance with the Constitution, unless Congress has provided equally effective and independent review elsewhere within the federal judiciary;

(2) Congress cannot strip from the jurisdiction of the federal courts a narrow group of cases which involve constitutional claims to which Congress is hostile; and

(3) Where, pursuant to either of these principles, Congress is constitutionally obliged to provide federal court jurisdiction, it cannot cripple the federal courts by denying them the authority to grant all reasonably effective remedies.

These principles require and deserve a detailed defense. Rather than venture such a defense here, I have enclosed a copy of an article in which I set out the firm basis upon which these principles rest (Sager, Foreword: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts, 95 Harv. L. Rev. 17 (1981)).

Legislation which substantiallyy reduced or eliminated the diversity jurisdiction of the federal courts would do no violence to any of these principles. Accordingly, such legislation would fall within the otherwise generous power of Congress to regulate the jurisdiction of the federal courts, to which these principles stand as exceptions. This conclusion is well supported by congressional precedent. Congress has never conferred the whole of Article III diversity jurisdiction on the lower federal courts, and has never permitted

BEST DOCUMENT AVAILABLE

The debates of the Constitutional Convention are unclear as to why the Constitution made provision for such jurisdiction; nor is pertinent legislative history much aid as to why the First Congress exercised its prerogative to vest diversity jurisdiction in the Federal courts.[2]

Many legal scholars who have researched this issue have concluded that it was based on a fear that State courts would be biased or prejudiced against those from out of State.[3] A minority view is that the Nation's early lawmakers shared misgivings as to whether at least some of the State courts would be fair to the interest of creditors, out-of-staters or in-staters.[4] Another position is that the Federal courts being better than the State, it was preferable to route as many cases into the former as possible.[5]

In any event, the conditions that existed in 1789 are vastly changed today. The decisions as to what role diversity jurisdiction should play in the modern American judicial system, and similarly, as to what should be the jurisdictional balance between the State and Federal court systems must be made on the basis of present facts, statistics, and theories.[6]

Need for the Legislation

At present there are several significant reasons for the proposed legislation. It is the view of the committee that the abolition of di-

---

the Supreme Court to exercise the whole of its Article III diversity grant. From the Judiciary Act of 1789 onward, federal diversity jurisdiction has always been narrowed by an amount in controversy requirement; the initial requirement of $500 has grown to the present level of $10,000 in 28 U.S.C. 1332. While Article III would otherwise grant the Supreme Court jurisdiction over diversity cases originating in the state courts, Congress has always excepted these cases from the Court's jurisdiction. Originally, Congress limited federal diversity jurisdiction to those cases in which one of the parties was a citizen of the forum state. In each of these instances, Congress has exercised its substantial power to regulate the jurisdiction of the federal courts, a power that extends to the drastic reduction or elimination of federal diversity jurisdiction.

But the broad reach of Congressional authority over federal court jurisdiction, as it is considered against the backdrop of proposals to shrink or eliminate diversity jurisdiction, should not be misread as a constitutional carte blanche that includes the power to enact jurisdictional limitations of the sort contemplated in those bills now before Congress that pertain to abortion rights, school prayer, or mandatory busing to desegregate the public schools. Most, if not all of these bills violate one or more of the constitutional principles that limit the authority of Congress to regulate jurisdiction. And congressional precedent, which so securely supports reductions in diversity jurisdiction, argues strongly against the action contemplated in these bills. Thus, for example, from the first Judiciary Act of 1789 to this day, Congress has adopted legislation that assured the Supreme Court of jurisdiction to superintend state and local compliance with the Constitution. Even when the federal courts have diversed in their interpretation of the Constitution from the views favored by significant elements in the Nation and in Congress, Congress has firmly committed itself to the ideal and reality of "an independent court, a fearless court, a court that will dare to announce its honest opinions in what it believes to be the defense of liberties of the people." Senate Report No. 711, 75th Congress, 1st Session 13–14 (1937).

In sum, the reduction or abolition of diversity jurisdiction, while ripe with important questions of judicial policy, is plainly within Congress' broad authority to regulate the jurisdiction of the federal courts. But that observation or the precedent of congressional action to curtail diversity jurisdiction—should such action transpire—cannot be taken as support for other pending jurisdictional legislation that would bring Congress into direct conflict with the history, text and logic of the Constitution.

Sincerely,

LAWRENCE G. SAGER,
Professor of Law.

[2] Friendly, *The Historic Basis of Diversity Jurisdiction*, 1 HARV. L. REV. 483, 487 (1928). The First Congress limited diversity of citizenship jurisdiction to cases involving more than $500 in controversy. 1 Stat. 73 (1789). Similar limitations have been an integral element of every subsequent jurisdictional statute passed by Congress.

[3] *See, e.g., Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch), 61, 181 (1809); Frank, *Historical Bases of the Federal Judicial System*, 13 LAW & CONTEMP. Prob. 1 (1948).

[4] *See, e.g., Friendly, supra* note 1, at 487.

[5] In Federalist No. 81 Alexander Hamilton observed: ". . . every man may discover, that courts constituted like those of some of the States would be improper channels of the judicial authority of the Union."

[6] A. Wright, LAW OF FEDERAL COURTS 74 (2d ed. 1970).

BEST DOCUMENT AVAILABLE

versity jurisdiction is an important step in reducing endemic court congestion and its insidious effects on litigants. During the 1981 judicial year, 45,442 diversity cases were filed in the Federal district courts.[7] These filings comprised almost a quarter of the civil caseload at the trial court level.[8] Further, in 1981, appeals in 2,668 diversity cases were filed in the courts of appeals.[9] This made up approximately 11.5 percent of the total appellate caseload.[10]

Among the jurisdictional categories, diversity cases are more likely to be disposed of by trial than any others. In 1981, more than 11 percent of all diversity cases were terminated by trial. By comparison, only 7.2 percent of the federal question cases reached trial, and less than 3 percent of the civil cases brought by or against the United States were terminated after trial. The high percentage of trials does not, however, mean that such cases are necessarily complex. Rather it merely means that compared to the other types of civil cases that are typically in Federal courts they tend to go to trial more frequently. There are unfortunately, no studies comparing the complexity of the cases brought under state law in Federal court because of diversity jurisdiction with cases of same type that are found in state courts. Despite the growth of no fault insurance, the number of diversity cases filed in district court and the number of appeals in such cases continue to increase each year. The number of diversity cases has increased by approximately 14,000 cases in the last 4 years. In short, the inexorably expanding workload of the federal courts and the resultant congestion and delay make it clear that some reduction in the types of cases that can be brought in Federal court is imperative.[11]

The diverting of diversity cases from the Federal courts to the State courts will not impose a substantial burden on the latter. Essentially, 45,000 cases pending before 400 Federal district judges will cause few problems when allocated among 6,000 States judges of general jurisdiction.[12] It is worthy of note, in this regard, that the Conference of

---

[7] Letter from the Administrative Office of the United States Courts to the Committee on the Judiciary, United States House of Representatives, July 7, 1982 (hereinafter *Administrative Office Letter*).

[8] Id.

[9] Id.

[10] Id.

[11] The rate of increase in diversity cases exceeds the rate of increase in civil filings by approximately 50 percent. *Administrative Office Letter.*

[12] A study of over half the states by the Senate Judiciary Committee indicates that the increase in the civil business of state courts of general jurisdiction caused by the elimination of federal diversity jurisdiction would vary from .27 to 1.5 percent. Burdick, *Diversity Jurisdiction Under American Law Institute Proposals: Its Purpose and Effect on State and Federal Courts*, 48 NORTH DAKOTA L. REV. 1, 14–15 (Table 4) (1971). Subsequent research of a more sophisticated nature has shown that the impact of such a shift of diversity cases would likely be less than uniform for all of the various States.

The most recent study of the issue of delay reaches the conclusion that the degree and nature of the delay is idiosyncratic. Grossman, Kritzer, Bumiller and McDougal "measuring the pace of civil litigation in Federal and state trial courts." 65 JUDICATURE 86, 112 (1981). Thus, there may be substantially different case processing times between some states courts and some Federal courts, but that in many States the delay factors are relatively the same within that state between state and Federal court. In a study of diversity cases these researchers concluded that there were no material differences in South Carolina and New Mexico in case processing time. On the other hand in Wisconsin the Federal courts were slower, and in California the State courts were slower. Thus, at best the impact of the abolition of diversity would likely vary considerably from state to state.

BEST DOCUMENT AVAILABLE

State Chief Justices (the primary national organization presenting state courts) in its Resolution of August 3, 1977, observed that the state courts were "able and willing" to assume all or part of the Federal diversity jurisdiction.[13]

It is the view of the committee that the original reasons for diversity jurisdiction have long since disappeared. At present, there is little evidence that the State courts are less qualified or, due to latent prejudice against out-of-staters, unable to render fair and impartial justice in these cases.[14] Since Federal juries are now drawn from the same registration or voter lists as State jurors, although from a larger area within the State,[15] arguments that Federal juries are less biased

---

Yet even for the handful of States that would receive a disproportionately large share of the transferred cases the percentage of the total state civil case load represented by the transferred diversity cases would remain relatively small.

If certain states can be shown to expect extreme difficulties in implementing the transfer it is, of course, possible to extend the effective date of the legislation to permit States to take the necessary steps to handle the new cases. *See* letter from Chief Justice Albert Barney, Supreme Court of Vermont, to Representative Robert W. Kastenmeier, July 15, 1982. It is also likely that the transfer of diversity cases may act as an incentive for the reform of certain State court procedures.

[13] *See* Resolution of the Conference of Chief Justices (Aug. 3, 1977) and explanatory letter from Chief Justice Albert W. Barney (Supreme Court of Vermont) to Honorable Robert W. Kastenmeier (July 15, 1982).

[14] *See* Henry Friendly, FEDERAL JURISDICTION: A GENERAL VIEW 146 (1973).

[15] Jury Selection and Service Act of 1968, § 101, 82 Stat. 54, 28 U.S.C. §§ 1861–63. This point is more fully explained in the letter set forth below:

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
Washington, D.C., August 2, 1982.

DAVID BEIER, Esq.,
Counsel, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. BEIER: Bill Weller has asked me to write to you in regard to a question recently raised at hearings before your subcommittee with respect to the composition of federal court jury wheels as related to those of the state courts.

The Jury Selection and Service Act of 1968, as amended, provides at 28 U.S.C. § 1863(a) that each United States district court shall have in operation a written plan for random jury selection, which shall be consistent with and effectuate the objectives of the Act. Section 1863(b)(2) requires that the selection plan shall specify voter registration lists (or lists of actual voters in states where preregistration is not required for voting) of the political subdivisions within the judicial district as the source for names of prospective jurors. This subsection permits other sources of names to be used in addition to voter lists where necessary to foster the policies of the Act, but in practice this authority to supplement voter lists has rarely been employed. We are aware of only two out of the 94 district courts, Colorado and the District of Columbia, which have invoked this authority. Both of these courts draw juror names from state automobile drivers license records as well as voter lists because they believe that their voter lists are not representative of the population on account of demographic conditions peculiar to these judicial districts.

The voter lists utilized by the United States district courts for federal jury selection are defined at 28 U.S.C. § 1869(c) and (d) to mean official lists or records maintained by state or local election officials of persons registered to vote or actually voting in either the most recent state or the most recent federal general election. Section 1863(b)(3) and (4) further provides that the district court selection plans shall specify procedures for the random selection of names from the designated source lists and for the placement of such names into a master jury wheel. Following the determination of the qualifications of these prospective jurors for service and of any exemptions or requests for permanent excuse, 28 U.S.C. § 1866 provides for the placement of names of prospective jurors found to be qualified into a qualified jury wheel and for their selection at random from such wheel to be assigned to grand and petit jury panels.

Thus the federal district courts compose their own jury wheels in conformity with the Jury Selection and Service Act and their local selection plans. They do so without any direct reference to the jury wheels or the jury selection practices of the state courts of their jurisdiction. Nevertheless our information is that an increasing number of state courts now employ voter lists as the source of their jurors as well. Thus federal and state jury wheels are frequently composed from the same basic source lists. This method of jury selection has widely supplanted the former "key man" system for picking juries in the states, just as it did in the federal courts upon the enactment of the Jury Selection and Service Act of 1968, Public Law No. 90-274, 82 Stat. 53. The legislative history of this 1968 enactment fully explains the Congressional policy in this regard and contains an

BEST DOCUMENT AVAILABLE

than their State counterparts are insubstantial. Moreover, today's modern State court systems stress the selection of qualified judges, provide for appellate review of lower court decisions, and are dedicated to providing fair, impartial, and objective justice.

In short, although there is still far too much prejudice in the United States (especially on grounds of race, religion, economic class, sex, nationality and age), it is the committee's view that it is doubtful that prejudice against an individual because he or she is from another State is any longer a significant factor in this country's State courts.

Today, the United States is a more mobile society than that of the 1st Congress or even the 80th Congress. People travel often freely for both business and personal reasons. States are interconnected by highways and airways communications are made easy by telephone, telegraph and television. Technological change, education and economic prosperity have interacted to substantially reduce the risk of prejudice against out-of-staters.

In any event, if pockets of preiudice based on state of residence do remain, the solution to this problem is not to allow most diversity cases to be filed in the Federal courts, but rather to commit time and resources to improving the quality of the State courts. In addition, change of venue is generally available within a state if bias or prejudice is shown in a particular location. *See* Library of Congress. American Law Division, "Fifty State Survey of Change of Venue Provisions in Civil Cases Where Venue is Properly Laws." March 19, 1979. A secondary and desired effect of H.R. 6816 is that it will stimulate interest on the part of litigants, academics, the business community and the practicing bar to improve state judicial machinery.

Federal judges have little interest (other than that fair justice be rendered, and this is presumably shared by state court judges) in deciding diversity cases. Under the Supreme Court's landmark decision in *Erie* v. *Tompkins*,[16] the Federal courts are required to apply State law in resolving diversity cases. Thus, when a diversity case involves clearly established issues of State law the Federal court must act mechanically to apply that law. H. Friendly, FEDERAL JURISDICTION: A GENERAL VIEW, at 142–3 (1973). To the extent that the State law to be applied in a particular case is unsettled, however, the Federal courts are not allowed to authoritatively determine State law. Thus, diversity jurisdiction not only requires the Federal courts to allocate their scarce resources to the arduous and ultimately wasteful task of guessing what State law is on issues upon which only the State court can authoritatively act. This practice may actually delay the precedential development or complicate the determination of State law.

---

excellent discussion of the unique suitability of voter lists for this purpose. *See* S. Rep. No. 891, 90th Cong. 1st Sess. at 15–17 (1967) and H.R. Rep. No. 1076, 90th Cong. 2nd Sess. at 4–5 (1968).

You may be interested to know that the Jury Act at 28 U.S.C. § 1869(f) does establish a direct tie-in between the selection of juries in the United States District Court for the District of Columbia and in the local Superior Court of the District of Columbia. This is the only instance of a direct link between federal and local jury selection mechanisms. I hope that this discussion satisfactorily responds to the question which has been raised. If I can be of any further help in this matter, please feel free to call me at 633–6127.

Sincerely,

WILLIAM R. BURCHILL, Jr.,
Deputy General Counsel.

[16] 304 U.S. 64 (1938).

BEST DOCUMENT AVAILABLE

The proponents of diversity often assert that the burden of proof is on those who seek to abolish the diversity jurisdiction of the Federal courts.[17] It is the view of the committee that this is little justification for retaining diversity, and in any event, does not respond to the persuasive reasons advanced by those who support abolition.

In conclusion, the proposed legislation recognizes that diversity is an idea whose time has passed. The Federal courts are a scarce resource and should be treated as such.[18] The flood of case filings can only be checked by controlling the flow of lawsuits. Just as with the energy crisis, priorities and rules of consumption must be set. First, for cases that do not present issues of Federal or constitutional law there should be only one court per customer—the choice of forum is a luxury that our judicial system can no longer afford. Second, the Federal courts must be freed to do the job they do best—that of adjudicating disputes in traditional Federal subject matter areas such as copyright, patents, trademarks, commerce, bankruptcy, antitrust, and admiralty; rendering speedy criminal justice for both victims and those accused of crimes; resolving vital, and often recently identified, rights which relate to welfare, occupational safety, the environment, consumerism, and privacy and protecting the basic civil and constitutional liberties of all citizens. In addition, the State court systems must be accorded a respected role in the American judicial system. They are ready, willing, and able to provide needed relief to the Federal system.

Even if diversity had been abolished years ago, there would still have been 167,789 civil cases filed in Federal court during the judicial year 1980;[19] an increase of over two hundred percent since the 1960 judicial year.[20] With caseloads rising as they are, elimination of diversity will only serve as an important restraint on the potential for growth in the Federal caseload.

HISTORY OF DIVERSITY ABOLITION LEGISLATION

The Subcommittee on Courts, Civil Liberties, and the Administration of Justice has held extensive hearings on the subject of the jurisdiction of the Federal courts and the crisis of court congestion during the last three Congresses. The printed hearing record on the question of diversity alone exceeds 1,000 printed pages. Such an exhaustive record contradicts the claims of critics that this legislation was the result of a less than thorough study.

95TH CONGRESS

During the 95th Congress the subcommittee held general oversight hearings on the State of the Judiciary and Access to Justice.

These hearings reviewed the work of the Study Group (Freund Committee) on the Caseload of the Supreme Court (1972); the Com-

---

[17] *See, e.g., Frank, For Maintaining Diversity Jurisdiction,* 73 Yale L.J. 1 (1963). "Note, Federal Diversity Jurisdiction, 33 Rec. Assn. B.C.N.Y. (1978).

[18] *See, e.g.,* statements of Prof. Burt Neuborne and Hon. Shirley M. Hufstedler during Hearings on "State of the Judiciary and Access to Justice" before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary at 112, 150, 95th Cong., 1st Sess. (1977).

[19] *Administrative Office Letter.*

[20] Administrative Office of the United States Courts, *Annual Report,* Table C2 at 230 (1960).

BEST DOCUMENT AVAILABLE

mission on Revision of the Federal Court Appellate System (June 1975); the National (Pound) Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (April 1976); Pound Conference Followup Task Force (August 1976); and the Department of Justice Committee on Revision of the Federal Judicial System (January 1977).

One of the surprise results of these hearings was the virtual unanimity with which the witnesses suggested that diversity jurisdiction be abolished or curtailed. None of the witnesses at these hearings challeged the proposition that nothing should be done to alter diversity jurisdiction.

On the basis of this solid evidence, the subcommittee decided that legislative hearings on diversity jurisdiction should be conducted. Four days of hearings were held (on September 22, 27, 28 and 29, 1977) during which respected jurists and legal scholars testified. Once again, the vast majority of participants supported abolition of diversity jurisdiction. Diversity of Citizenship Jurisdiction before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary at 221, 95th Cong., 1st Sess. (1977).

The exceptions were the Department of Justice, Public Citizen, and the American College of Trial Lawyers, which all continued to support partial elimination of diversity, that is, the elimination of in-State plaintiff jurisdiction. John P. Frank, Esq., and Robert G. Begam, Esq., on behalf of the Association of Trial Lawyers of America, were the only witnesses to publicly oppose any legislative changes.

The Subcommittee on Courts, Civil Liberties, and the Administration of Justice, then reported H.R. 9622, to abolish diversity jurisdiction and to make changes in the amount in controversy in Federal question cases.

On February 7, 1978, the full committee considered H.R. 9622, as amended by the subcommittee, and after general debate, ordered the bill reported favorably by a roll call vote of 28–2. No amendments were offered in the committee.

The bill, H.R. 9622, subsequently passed the House by a vote of 266–133 on February 28, 1978. Later in the Congress an amendment to the Magistrates Reform Act was offered by Mr. Wiggins of California, was adopted by unanimous consent. The amended Magistrates Reform Act subsequently passed the full House by a vote of 323–49. Unfortunately the Senate did not act on diversity legislation during the 95th Congress.

96TH CONGRESS

Early in the First Session of the 96th Congress the Subcommittee continued its efforts with respect to the diversity issue. Three days of hearings were held on court reform issues (including magistrates reform and abolition of the amount in controversy requirement for Federal question cases); the main focus of which was on diversity. Hearings before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, United States House of Representatives, on H.R. 1046 and 2202, (1979) (hereinafter *Diversity Hearings—1979*). The Subcommittee received testimony from the Department of Justice, the American Bar Association, the

American Trial Lawyers Association, the Conference of Chief Justices, public interest and civil rights lawyers, members of Congress and distinguished academics. In addition, the Subcommittee received numerous written communications which were made part of the hearing record.

The hearings represented a comprehensive survey of the available arguments for and against the abolition of diversity. A consensus of sorts emerged from the hearings. The Justice Department, the Judicial Conference of the United States, and state court judges favored abolition. Virtually all organized bar groups opposed any change. The balance in favor of abolition was tipped, however, by the position of numerous academicians and public interest and civil rights groups who gave needed impartiality and new insight to the debate.

After the hearings the Subcommittee reported to the full Committee on the Judiciary a bill, H.R. 2202, that would have abolished diversity of citizenship jurisdiction and which eliminated the requirement that there be more than $10,000 in controversy before Federal jurisdiction could be invoked in a Federal question case. When this bill was considered by the Committee it became clear to the sponsors that the chances of passage of the Federal question amendments were harmed because of the controversy in the Senate associated with the abolition of diversity. Thus, a legislative judgment was made to proceed to the House with only the Federal question portion of the bill. This step did not represent an abandonment of the bills sponsors' commitment to abolition of diversity. *See* H. Rep. 96–1461, Separate Views of the Honorable M. Caldwell Butler, joined by Messrs. Kastenmeier, Railsback, Fish, Drinan, Seiberling, Edwards, Kindness, Moorhead, McClory, Rodino, Synar, Mazzoli, Hughes, Danielson, Gudger, and Lungren.

As it turns out this judgment to proceed by eliminating the amount in controversy requirement in Federal question cases as a first step was correct. The Federal question amendments are now law. P.L. 96–486, 94 Stat. 2369. The only reason that the diversity legislation was not pressed further was because of its fate in the Senate.

97TH CONGRESS

During the previous debates on diversity many of the opponents of abolition pointed to the creation of one hundred and seventeen new Federal District court judgeships in the 95th Congress as a long term solution to caseload concerns. However, in the time that has passed since the addition of these new judgeships it has bbecome inreasingly clear that the Federal judiciary at its current size cannot keep up with the burgeoning caseload. In fact in 1981 the Judicial Conference requested the appointment of an additional 29 District judgeships (23 permanent and 6 temporary).

Preliminary caseload data shows that the number of cases filed per judge in 1982 has surpassed the number filed per judge immediately prior (in 1978) to passage of the omnibus judgeship legislation weighted caseload filings are now roughly the same.

In response to the current budgetary crisis Mr. Butler of Virginia, requested that the Subcommittee look anew at the abolition of diver-

sity jurisdiction. The Subcommittee scheduled one day of hearings on Mr. Butler's diversity bill (then, H.R. 6691). Before the hearing the Subcommittee contacted many of the participants from the earlier hearings. Each of these persons or organizations was asked if their position on the abolition concept had changed since their last appearance or submission. Each time the answer was the same—regardless of whether the person supported or opposed the bill—nothing has changed except that their feelings had grown stronger. Thus, in light of the already extensive record, the only witnesses who were invited to personally appear before the Subcommittee were a representative of the Department of Justice—of a new Administration—and our colleague Dan Glickman from Kansas. The Subcommittee and Committee have subsequently received additional written submissions since the hearing on July 14, 1982.

28 See Hearings

The Subcommittee favorably repored as a clean bill Mr. Butler's measure for the abolition of diversity of citizenship jurisdiction. In due course on August 10, 1982 the bill, H.R. 6816, was considered and favorably ordered reported by a vote of 16–10 by the Committee on the Judiciary.

During the Committee markup only one amendment was offered. Mr. Frank of Massachusetts offered an amendment to abolish diversity only insofar as it permits the invocation of Federal jurisdiction by a person who lives in the same state as the Federal forum. This amendment was modelled after the suggestions of the American Law Institute and comes close to the position previously articulated by the American College of Trial Lawyers. The amendment was however, defeated by a vote of 10 opposed, five in favor.[21]

---

[21] There are a number of policy and technical questions raised by the amendment. The amendment assumes that because the primary reason for diversity remains the fear of bias against out of state litigants that it would be logical to remove the opportunity of "in-State" plaintiffs to sue out of state defendants based on State tort violations. While proponents of abolition argue that bias has largely disappeared, they also seek this change so as to leave state questions in state court and Federal questions in Federal court. Thus, the Frank amendment does not adequately address the fundamental question of how scarce Federal resources are to be allocated.

A second problem with the Frank amendment is illustrated by Professor David Currie who points out that the policy of providing a forum only for the help of an outsider comes into conflict with the policy of trying cases in the most convenient forum. Professor Currie gives two examples:

> Both objections can be illustrated by the example of a suit by a Pennsylvania plaintiff against a Delaware defendant. The "out of State-Plaintiff only option" would permit suit to be filed in the federal court in Delaware, or in any available state court but not in federl court in Pennsylvania. But the "out of State-Plaintiff only option" does not say the case cannot be heard in the Pennsylvania federal court. If suit is filed in a state court in Pennsylvania the defendant may remove, and it seems not unlikely that he will since he is the party with reason to avoid the state court. And if suit is filed in the Delaware federal court, the defendant may move to transfer it to the Pennsylvania federal court. It would be unfortunate if the "out of State-Plaintiff only option" were read to preclude the transfer, because Pennsylvania may be by far the better place to try the case. But of the motion is granted, or if the suit is filed in Pennsylvania and removed, there has been a wasteful game of musical chairs. The present rule is assuredly impossible to justify if one looks only to the policy of providing a forum for the out-of-state litigant, but it makes a good deal of sense because it simplifies the task of judicial administration.
>
> Currie, "The Federal Courts and the American Law Institute," 36 U. CHI. L. REV. 1, 45–46 (1968).

On a more practical level the amendment failed to make the salutory changes in statutory interpleader, 28 U.S.C. 1335, and venue, 28 U.S.C. 1291, that are made in the bill. Finally, this limited approach would permit the continuation of needless litigation about issues like the amount in controversy and place of citizenship of litigants. It would also not achieve the ancillary benefits that abolition would achieve. *See* Rowe, "Abolishing Diversity Jurisdiction Positive Side Effects and Potential for Further Reforms," 92 HARV. L. REV. 963 (1979).

WHAT HAS CHANGED WITH RESPECT TO DIVERSITY OF CITIZENSHIP JURISDICTION SINCE THE HOUSE FIRST PASSED LEGISLATION TO ELIMINATE IT (IN 1977)?

Cost Savings to Federal Government

During the 95th Congress the Administrative Office of the United States Courts submitted information about the relative cost saving that would have occurred if diversity had been abolished. The 1979 estimate concluded that there would be annual savings of 8.8 million dollars. This estimate has since been refined and updated. The current estimate found to be acceptable by the Congressional Budget Office is that direct savings of six million dollars would occur during the first two years after diversity was abolished.

In 1982 the Administrative Office also attempted to give an estimate of the cost avoidance if the bill passed. Cost avoidance, in this case, means the extra costs that the Federal government would not incur because of the removal of nearly fifty thousand civil cases per year from federal courts. In sum, abolition would virtually eliminate the need to create any significant number of new Federal District Court judgeships in the foreseeable future. The estimated cost avoidance savings over the next 5 years would be approximately one hundred and sixty ($160) million dollars.

Thus, from a financial perspective the immediate and long term savings associated with abolition of diversity are stronger and better documented than they were during the 95th Congress.

Federal-State relationship

One of the most profound political transformations in modern American political history occurred with the election of Ronald Reagan as President in 1980. President Reagan has, since his arrival in Washington, enunciated a philosophy that promises to allocate governmental responsibility so that the most local level of government that is capable of performing an appropriate and necessary government service is given the responsibility to carry out that function.

As Assistant Attorney General Jonthan Rose of the Department of Justice testified before the Subcommittee, the abolition of diversity is totally consistent with the Administration program, because "state courts should have the paramount role in resolving disputes concerning matters of local interest (and) issues of state law."

Recognition of the quality of justice rendered the state courts has also emerged in the legal literature.[22] This recognition of the competence of our state courts systems is long overdue.

Research

During the debates on diversity there has often been extended discussion of the paucity of research data with respect to the factors that go into forum choices. Opponents of abolition claim that fear of bias against out of state litigants remains a substantial problem, although no empirical research supported this view. On the other hand pro-

[22] See, e.g., O'Connor, "Trends in the Relationship between the Federal and State courts from the Perspective of a State court judge," 22 WM. AND MARY L. REV. 801 (1981); Abrahamson, "Reincaration of State Courts," 5th Annual Roy R. Ray Lecture to Southern Methodist University School of Law, March 5, 1982. See also Brennan, "State Constitutions and the Protection of the Individual," 90 HARV. L. REV. 489 (1977).

BEST DOCUMENT AVAILABLE

ponents of the bill claim that impact of abolishing diversity would be minimal on the state court systems. In the last few years research has been published that relates to both contentions. Unfortunately, the results are often conflicting also, due to the inherent problems in many of the research designs total confidence cannot be placed in any single study of these issues.[23]

Section-by-Section Analysis

Section 1—Short title

This section indicates that this Act may be cited as the "Diversity Jurisdiction Reform Act of 1982."

Section 2—Diversity of citizenship jurisdiction

Section 2 of the bill amends 28 U.S.C. § 1332 by striking paragraph (1) of subsection (a) and by redesignating the following paragraphs. This has the effect of abolishing diversity of citizenship jurisdiction in its entirety and of retaining alienage jurisdiction: that is, suits between citizens of a state and foreign states or citizens or subjects thereof.

Alienage jurisdiction is not abolished for several reasons. It was the view of the committee that there is still a real danger of prejudice, in any form, against the alien. Furthermore, reservations raised by the Department of State that foreign relations were involved here were accorded great weight.[24]

In particular the Department of State advised the committee that abolition of alienage jurisdiction could have adverse affects on our international relations.[25]

---

[23] For example, Kristen Bumiller found that rural versus urban setting of the court influences the perception of local bias and quality of courts. In addition, she found that relative differences in efficiency and procedure between state and federal courts are also important factors affecting forum choice. Bumiller, "Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform," 15 *Law and Soc. Rev.* 749 (1980–81).

On the other hand Jolanta Perlstein found that local bias does not stand out as the overriding factor in the choice of forum. Rather she found that the potential for delay in the processing of cases in State or Federal courts is the factor that was most statistically significant. Perlstein, "Lawyers' Strategies and University Jurisdiction ' 3 Law and Policy Q. 321,332,337 (1981).

Compare Goldman, "Diversity Jurisdiction and Local Bias; A Preliminary Inquiry," J. Legal Stud. 93 (1980.) (local bias is an important—but not predominant—factor in attorneys choice of forum).

Older research has also reached conflicting results:

(1) Summers "Analysis of Factors that Influence Choice of Forum in Diversity Cases," 47 Iowa L. Rev. 933 (1962) (geographical convenience the most frequently cited reason for forum choice);

(2) Note, "The Choice Between State and Federal Court in Diversity Cases in Virginia," 51 Virg. L. Rev. 178 (1965) (fear of bias not frequently cited as a factor in forum selection).

[24] In this regard, the American Law Institute's Study of Division of Jurisdiction between State and Federal Courts (1968) concluded (at 108):

"It is important in the relations of this country with other nations that any possible appearance of injustice or tenable ground for resentment be avoided. This objective can best be achieved by giving the foreigner the assurance that he can have his case tried in a court with the best procedures the federal government can supply and with the dignity and prestige of the United States behind it."

[25] In an August 9, 1982 letter to Rep. Robert W. Kastenmeier from Assistant Secretary of State Powell Moore, the Department of State concluded that it welcomed continuation of alienage jurisdiction because:

> The United States is responsible under international law to provide aliens fair and impartial justice and access to the United States court system. In some cases treaties provide specific standards of access to the judicial process, but even without a treaty, an alien is entitled to certain internationally recognized minimum standards of justice. Under international law, moreover, the Federal government is responsible for any denial of justice by a state court, even though the Federal government has no direct authority over those tribunals. Thus, while the Department has great confidence in the competence, integrity and impartiality of the state court systems, the availability of civil jurisdiction in federal courts under a single nationwide system of rules tends to provide a useful reassurance to foreign governments and their citizens.

BEST COPY AVAILABLE

To reflect these changes, the heading for § 1332 is further amended by striking "Diversity of citizenship" and by inserting "Alienage."

Moreover, for the remaining alienage cases, the amount in controversy bar is increased from $10,000 to $25,000 in subsection (b) of section 2 of the bill. This provision reflects inflationary pressure which occurred since 1958, when the statutory bar was raised to $10,000. It also makes it more difficult for citizens and aliens to abuse Federal jurisdiction by arbitrarily raising their claimed monetary damages.

Section 3—Other provisions

Section 3 retains statutory interpleader as a basis for Federal jurisdiction. It implicitly recognizes that interpleader serves a valuable function, providing a Federal forum for suits in which no single State court could obtain jurisdiction and in which there are widely scattered, competing claimants.

Subsection (a) conforms 28 U.S.C. § 1332 (c) and (d) to include cross references to § 1335 (statutory interpleader).

Subsection (b) (1) and (2) are conforming amendments necessitated by a need to delete the phrase "diverse citizenship as defined in section 1332 of this title" in the interpleader statute. Since diverse citizenship is no longer defined in § 1332, a new definition in § 1335 is necessary. This definition is derived from the provisions of current law with respect to jurisdiction.

Subsection (c) conforms 28 U.S.C. § 1342(1) by striking the phrase "diversity of citizenship" and replacing it with "alienage."

Subsection (d)(1) conforms and modifies the pertinent venue provisions in 28 U.S.C. § 1391.

First, it strikes the reference to diversity jurisdiction in § 1391(a).

Second, § 1391(a) in conformed to use the same language as that used in § 1391(f), amended by Congress in 1976. The added language ("in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.") was originally proposed by the American Law Institute and was deliberately intended to avoid the "litigation-breeding" phrase "in which the claim arose."

Subsection (d)(2) strikes § 1391(b) which, considering the changes made in § 1391(a), is no longer necessary.

The net effect of subsection (d) is that the same venue rules will apply to all civil actions, be they grounded in alienage or Federal question jurisdiction. The proposed subsection thus cures the existing anomaly that choice of venue in § 1391(a) (diversity) is broader than in § 1391(b) (Federal question). In the view of the committee, this difference was fortuitous and illogical. Consequently, subsection (d) broadens the choice of forum in Federal question cases to allow suit to be brought in the judicial district in which all plaintiffs reside, in addition to the judicial district in which all defendants reside, or in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

Subsection (e) repeals 28 U.S.C. § 1441(b) which, if diversity is abolished, must also be eliminated. With alienage jurisdiction retained, § 1441(b) would have an inappropriate effect. It would block removal when an alien's co-defendant was a forum citizen, thus allowing a citizen plaintiff to prevent an alien from exercising his right to a

Federal forum through the technique of naming a forum citizen as a codefendant.

Section 4—Date of application

This section specifies that the Act applies to any civil action filed on or after the date of the Act's enactment. Because this legislation does *not* apply to pending cases there will be no need to dismiss, transfer, removal or otherwise affect the approximately 45,000 diversity cases currently in Federal court.

Oversight Findings

Oversight of the Federal judicial system and the administration of justice is the responsibility of the Committee on the Judiciary. During this and previous Congresses, the committee acting through the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, has held oversight hearings on the state of the judiciary and access to justice.

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the committee issues the following findings:

It is the view of the committee that the Federal judicial system has in the past served admirably and effectively to meet its constitutional and statutory mandates. At present, it is suffering from a crisis of court congestion. This overload not only threatens the welfare of the entire Federal judicial structure, but has insidious effects on litigants, especially those individuals who rely heavily on the Federal courts to vindicate their human rights. The crisis of overload also threatens the rule of law and thus is a menace to the national welfare itself.

The committee further recognizes that the Federal judiciary is a finite resource and should be treated as such. A previous Congress responded to increased demands for this commodity by voting to create over 100 new Federal judgeships. The committee finds, however, that the Federal judiciary cannot be expanded indeterminately without impairing its high quality. *See generally*, Vining, "Justice, Bureaucracy and Legal Method, 80 Mich. L. Rev. 248 (1981), Rubin, "Bureaucratization of the Federal court," 55 Notre Dame Lawyer 648 (1980). Therefore, the abolition of Federal diversity jurisdiction represents a complementary approach to solving the same problem. The committee finds that the Federal courts will be significantly aided by simply reallocating jurisdiction between the State and Federal judicial structures so that there is no longer overlapping jurisdiction between the two systems. Moreover, there is no reason to believe that the State courts are not ready and able to accept any resultant increase to their caseloads, or that there will be unfairness to litigants.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority on increased tax expenditures for the Federal judiciary.

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

Cost Estimate

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the committee estimates that no costs will be incurred in carrying out the provisions of the reported bill.

Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 9622 prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., August 19, 1982.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6816, the Diversity Jurisdiction Reform Act of 1982, as ordered reported by the House Committee on the Judiciary, August 3, 1982. This bill abolishes diversity of citizenship as a basis of jurisdiction of Federal district courts.

The Congressional Budget Office estimates that no additional cost to the Federal Government would be incurred as a result of enactment of this legislation and that some savings could result from workload reductions. Based on information provided by the Administrative Office of the U.S. Courts, CBO estimates that savings resulting directly from this bill could be as much as $6 million each year in the first two years. This estimate assumes that the elimination of approximately 50,000 diversity cases in the Federal district courts would result in the termination of as many as 500 temporary clerk positions, reduced juror costs and a reduction in the number of filings per Federal judge.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin,
Director.

COMMITTEE VOTE

H.R. 6816 was reported by recorded vote 16 to 10.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION.

Sec.
1330. Action against foreign states.

* * * * * * *

1332. [Diversity of citizenship] *Alienage*; amount in controversy; costs.

* * * * * * *

§ 1332. [Diversity of citizenship] *Alienage*; amount in controversy; costs.

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of [$10,000] *$25 000*, exclusive of interest and costs, and is between—

[(1) citizens of different States;]

[(2)] *(1)* citizens of a State and citizens or subjects of a foreign state;

[(3)] *(2)* citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

[(4)] *(3)* a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of [$10,000] *$25 000*, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section [1441] *1335* of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided further*, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section *and section 1335 of*

this title, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

* * * * * * *

§ 1335. Interpleader.

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants [, of diverse citizenship as defined in section 1332 of this title,] *of diverse citizenship* are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(c) For purposes of this section, the term "claimants of diverse citizenship" means claimants who are—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and citizens or subjects of a foreign state who are additional parties; or

(4) a foreign state, as defined in section 1603(a) of this title, and citizens of a State or of different States.

§ 1342. Rate orders of State agencies.

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on [diversity of citizenship] *alienage* or repugnance of the order to the Federal Constitution: and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing: and

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

* * * * * * *

CHAPTER 87—DISTRICT COURTS; VENUE

* * * * * * *

§ 1391. Venue generally.

(a) A civil action [wherein jurisdiction is founded only on diversity of citizenship] may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or [in which the claim arose] *in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.*

[(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.]

* * * * * * *

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

* * * * * * *

§ 1441. Actions removable generally.

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

[(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.]

* * * * * * *

EXHIBIT A

RESOLUTION OF THE CONFERENCE OF CHIEF JUSTICES (AUG. 3, 1977)

Be it *Resolved*, That the Conference of Chief Justices approve the recommendations of the Committee of Federal-State Regulations concerning the following principles:

(1) Every citizen should have access to our court system as the ultimate forum for the resolution of unavoidable disputes and the protector of his constitutional rights.

(2) The demand for access to our court systems in this country can be expected to increase significantly in the years ahead—a demand which will be implemented by plans for prepaid legal insurance and other methods of making legal services more generally available.

(3) Efforts to divert, where appropriate, the processing of dispute resolution from the federal and state court systems through devices such as arbitration are to be encouraged and accelerated, but such diversion is only a partial answer to the problem.

(4) Notwithstanding reasonable expectations of dispute diversion, it can be anticipated that our federal court system will continue to be overburdened unless increased recognition is given to the role of state courts.

(5) Our state court systems are able and willing to provide needed relief to the federal court system in such areas as:

(A) Adequate review of state court criminal proceedings to assure that federally defined constitutional rights have been fully protected;

(B) Increased participation in the resolution of federal-question cases;

(C) The assumption of all or part of the diversity jurisdiction presently exercised by the federal courts.

(6) National funding to the states should include procedures and allocations to assure that the state court systems receive an equitable share of the funds without prejudice to the independence of the judiciary.

(7) Increased communication between congressional committees considering legislation affecting state courts and such entities as the Conference of Chief Justices will be useful.

Appendix B

Supreme Court of the United States,
Washington, D.C., November 18, 1977.

Hon. Robert W. Kastenmeier,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Let me thank you, and the members of your subcommittee, for acting favorably upon the Judicial Conference's recommendation for the abolition of both diversity jurisdiction and the amount-in-controversy requirement in federal question cases.

I hope that your bill, H.R. 9622, is considered by the entire Congress in the next session as expeditiously as your subcommittee has responded to the Conference's requests in this session. As I noted in my August 29 letter concerning your hearings on the State of the Judiciary and Access to Justice, the time has long since arrived for Congressional approval of legislation such H.R. 9622.

On behalf of the Judicial Conference, let me also thank you for the dedicated and responsive efforts your subcommittee has made in this first session to resolve many other problems facing the federal judicial system. We sincerely appreciate your work and look forward to being of further assistance to you in the future.

Cordially,

Warren E. Burger.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in exitsing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed in shown in roman):

TITLE 28, UNITED STATES CODE

* * * * * * *

PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.

1330. Action against foreign states.

* * * * * * *

1332. [Diversity of citizenship] *Alienage* amount in controversy; costs.

* * * * * * *

§ 1332. [Diversity of citizenship] *Alienage;* amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of [$10,000] *$25,000* exclusive of interest and costs, and is between—

[(1) citizens of different States;]

[(2)] (*1*) citizens of a State and citizens or subjects of a foreign state;

[(3)] (*2*) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

[(4)] (*3*) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of [$10,000] *$25,000* computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section [1441] *1335* of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided further*, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section *and section 1335 of*

this title, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

* * * * * * *

§ 1335. Interpleader

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants[, of diverse citizenship as defined in section 1332 of this title,] *of diverse citizenship* are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(c) For purposes of this section, the term "claimants of diverse citizenship" means claimants who are—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and citizens or subjects of a foreign state who are additional parties; or

(4) a foreign state, as defined in section 1603(a) of this title, and citizens of a State or of different States.

* * * * * * *

§ 1342. Rate orders of State agencies

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on [diversity of citizenship] *alienage* or repugnance of the order to the Federal Constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

* * * * * * *

CHAPTER 87—DISTRICT COURTS; VENUE

* * * * * * *

§ 1391. Venue generally

(a) A civil action [wherein jurisdiction is founded only on diversity of citizenship] may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or [in which the claim arose] *in any judicial district in which a substantial part of the events or omission giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.*

[(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.]

* * * * * * *

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

* * * * * * *

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

[(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.]

* * * * * * *

DISSENTING VIEWS OF REPRESENTATIVES DAN GLICKMAN, JACK BROOKS, BARNEY FRANK, GEO. W. CROCKETT, HAROLD SAWYER, F. JAMES SENSENBRENNER, JR., SAM B. HALL, JR.

Proponents of this legislation to abolish diversity jurisdiction face a heavy burden of proof. To deny our citizens access to federal courts through diversity jurisdiction after almost 200 years requires a compelling reason and complete information about its implications. The Judiciary Committee approval of this legislation on August 10, we feel was made without either of these prerequisites. The arguments of the abolitionists cannot overcome the historical, philosophical, and practical reasons why diversity jurisdiction should be retained without some showing of the effects shifting these cases to the states will have.

It is perfectly clear that elimination of diversity jurisdiction cases would remove a large number of cases from the overcrowded federal court dockets. The Administrative Office of the United States Courts has determined that over 45,000 diversity of citizenship cases were filed in 1981 in the United States District Courts, representing more than twenty-five percent of all civil cases filed. However, the essential question is whether the benefits of diversity jurisdiction outweigh the considerable burden it imposes. An individual's legal rights should not be restricted or compromised in order to adjust to the court system's problems. The cure for this overburdened justice system should not be to limit public access to the system. Cost, in time and money, not equality or efficiency of justice, is the basis of the abolitionists' position.

Elimination of diversity cases from federal court dockets is a simplistic solution to a complex problem. The Committee has recommended that these cases be shifted to the state courts without any showing of the readiness or ability of state court systems to absorb this extra caseload. While it is true that the Conference of Chief Justices has stated, in a much vaunted 1977 Resolution, that they are "able and willing" to assume all or part of the diversity jurisdiction presently exercised by the federal courts, there has been no such statement from the state trial judges—who will have to bear the brunt of these additional cases.

There are significant reasons to believe that the machinery of state court systems is not equipped to handle this extra caseload. Most state courts lack the support systems and law clerks available to federal courts. It is doubtful whether the state legislature will be willing to provide the additional funds needed to handle the extra work. In light of this fact, the very same Conference of Chief Justices Resolution previously cited also called for the assurance of federal funds to meet the needs of the state court systems.

A study published in the Summer 1978 issue of the State Court Journal found that the elimination of diversity jurisdiction from federal

courts would have a disproportionately high impact on no less than twenty states and would actually necessitate the establishment of new judgeships in seven of those states. Thus, the transfer of these diversity cases to the states would not affect all state courts equally. While simple division, dividing the number of diversity cases by the number of state court judges, produces a manageable quotient, this will not be a proportional shift of cases from 650 federal court judges to 8,000 state court judges. Instead, a majority of the diversity cases can logically be predicted to go to urban state courts where backlogs are often the greatest. In fact, in many instances, those very state courts are more congested than the federal courts in the same localities.

An important fact proponents of this legislation cite as one of the reasons diversity cases are an undue burden to the federal system is that they occupy a disproportionate amount of time and resources of the federal judiciary. When Assistant Attorney General Jonathan Rose testified before the Subcommittee on Courts, Civil Liberties and the Administration of Justice on July 14, 1982, he noted that diversity cases, as opposed to civil cases in general, "are likely to remain in the system for longer periods of time, to require more pretrial proceedings, to go to trial rather than to be settled, and by an overwhelming number to require a jury trial." In fact, according to the Administrative Office of the United States Courts, more diversity cases were disposed of by trial than any other jurisdiction category in 1981. Diversity cases are generally more complex, with higher stakes to the litigants, than the normal state court litigation. Removal of these cases from the federal courts, however, will not act to simplify them. Instead, the complex questions of fact and law can be expected to be as tenaciously argued in the state courts. They will, no doubt, occupy a disproportionate amount of the time and resources of state court judges. The essential difference is the fact that state court judges will have less experience in trying these cases and less elaborate support systems to aid them in adjudicating these cases.

The framers of the Constitution established diversity of citizenship jurisdiction originally because of their fear that state courts would be biased or prejudiced against litigants from out of state. There are conflicting results from studies of the continued existence of local bias. Proponents of this legislation argue that this fundamental purpose for diversity jurisdiction is no longer valid in today's mobile society. They are supported by a large number of legal scholars and theorists. Yet, many practicing lawyers, who work daily in these court systems, assert that sectional prejudice still exists; indeed, this is one of the reasons why the practicing bar overwhelmingly opposes this legislation. Because the existence and extent of local bias is impossible to quantify, the Committee has relied on the statements of experts without any precise means of actual verification. With the quality, and equality, of our justice system at stake, individual testimonials are, in our view, an insufficient basis on which to eliminate diversity jurisdiction.

Out-of-state parties still need an impartial forum in which to proceed. It is uncontroverted fact that state trial court judges in a majority of our states are elected officials, and elected officials have an unavoidable tendency to look out for their own constituencies. Certainly this does not imply that elected state judges are unethical, but there is an

undeniable interest in seeking the best for one's own constituents. The life tenure accorded to federal judges acts to insulate them from many of the local influences faced by their state court colleagues. It is clear that the very availability of federal courts as an option for some of these cases gives litigants a chance to avoid or minimize potential prejudice and this serves to keep the impact of local prejudice down. Importantly, litigants from out of state can in no way be held responsible for any shortcomings of state court justice—they did not elect the judges and do not pay taxes to support the system. Therefore, they should not be left to be adversely affected by its failings.

Since 1798, a symbiotic relationship has existed between federal and state courts. Federal court decisions have definitely provided substantive contributions to the evolution of state common law and the interaction acts to encourage judges in the federal system to recognize, and utilize, state improvements. There is clear educational value in the trading and mixing of ideas which has occurred between the parallel institutions and the entire justice system and our nation is richer for it. The abolition of diversity jurisdiction which would eliminate an important link in this partnership, would weaken the overall justice system in the United States.

The ultimate purpose of diversity jurisdiction is to protect the rights of litigants. Diversity jurisdiction can be considered a federal service designed to enhance citizens' basic rights. It cannot be disputed that federal courts have certain procedural advantages over many or all of the state courts in controversies between citizens of different states. Federal courts can obtain jurisdiction over out-of-state parties easier than state courts, and, in some cases, only a federal court can reach all the parties necessary to the suit. State courts cannot enforce their decisions in other jurisdictions as easily as federal courts can—especially important in increasingly complex litigation regarding interstate commerce. In the federal court system, pretrial discovery is readily available in other states and federal court judgments can be registered in any other federal court in the country. Importantly, the elimination of diversity jurisdiction obstructs the procedures now available in federal courts for centralizing and consolidating similar claims for pretrial purposes by multi-district panels.

Congress must recognize that an increasing population coupled with new legislative expansion will result in judicial expansion. In an increasingly mobile society, in an increasingly complex legal arena, it is imperative that Congress explore alternative methods of relieving the federal court workload and the delays caused by the overcrowded dockets. Simply shifting the logjam to the states is not an acceptable solution.

In the 95th Congress, this Committee's Report on similar legislation to abolish diversity jurisdiction, H.R. 9622, stated that with the increasing numbers of cases being filed "elimination of diversity will only serve as a temporary breather for the next couple of years." Such a fundamental institutional change is unwarranted simply to allow federal courts a "breather." Instead, Congress must carefully weigh the costs and benefits of maintaining diversity jurisdiction. The Justice Department has estimated that abolition of diversity jurisdiction will save the federal government $8.8 million. This figure is less than one-third of one percent of the total Justice Department budget and does

not take into account any future cost to the federal government of supplemental appropriations to help the expanded state court system pick up this responsibility. The most important factor in the total calculation must be considerations of fairness and efficiency in our justice system for our citizens. To the extent that Congress shifts cases to jurisdictions where state dockets are already heavy, we are, in effect, forcing our citizens to wait even longer to have their cases adjudicated. The record is incomplete on the question of whether abolition of diversity jurisdiction will enhance or reduce a citizen's basic legal rights. Congress has no actual knowledge of the effect this legislation will have on the state court systems or the judicial system as a whole. In order to eliminate a federal service, which fulfills a valuable public purpose and which is so well established and so universally desired, this Committee should require more information than just the bare facts of the number and percentage of diversity cases, how many go to trial, and how much time they take. It should require more than individual testimonials from legal theorists.

This Committee has a well-deserved reputation for careful. deliberate, and thorough consideration. It is ill served by recommending the abolition of diversity jurisdiction on less than a complete basis.

DAN GLICKMAN.
JACK BROOKS.
BARNEY FRANK.
SAM B. HALL, JR.
GEO. W. CROCKETT.
HAROLD SAWYER.
F. JAMES SENSENBRENNER, JR.

DISSENTING REMARKS OF THE HONORABLE HAROLD S. SAWYER

I dissent from this Committee's decision by a vote of 16 to 10 to abolish federal diversity jurisdiction. H.R. 6816 denies the American people their existing right to use the federal courts for the resolution of many important issues. I can find no support in either theory or fact to justify this loss in judicial quality to United States citizens, who are the natural benefactors and taxpaying supporters of the Federal courts. I, therefore, oppose H.R. 6816 and dissent from the Committee report.

Diversity jurisdiction, which allows parties from different states to litigate their claims in federal court, is an historical cornerstone of federal jurisdiction. Opening these federal courts to the people became this government's first social service. Our nation's founding fathers provided for diversity jurisdiction in the Constitution and created it in the monumental Judiciary Act of 1789. Diversity jurisdiction, therefore, constituted the initial caseload of the federal courts long before federal question jurisdiction was conceived. Supporters of H.R. 6816 have failed to carry the burden of demonstrating that this important, historical federal service is no longer useful.

Diversity jurisdiction is the sole protection from local bias against the out-of-state litigant. Unfortunately people naturally favor those who they know and with whom they share common traits. This local bias, a great concern of our nation's founders, is a continuing source of discrimination in our judicial system today. The extent of bias, which is most accurately measured by those who practice on a continuous basis before this nation's courts, remains very great as demonstrated by the unanimous opposition to this bill by the bars of all fifty states, the American Bar Association, and the American Trial Lawyer's Association.

The problem of local bias involves more than the local jury. Local bias is inherent in the institutional limitations of state judges, who, by the very nature of their positions, must be highly sensitive to community opinion. State judges are elected. And, if they wish to be reelected, the state judges must satisfy the local community. This places the out of state litigant at a serious disadvantage before an overburdened state court judge who must prioritize limited judicial resources to reflect the needs of the community. Without diversity jurisdiction, the out-of-state litigant loses the opportunity to appear before a life tenured federal judge who is free from these local political pressures. Yet, no one has addressed the possibility that the impact of the elimination of diversity may increase the amount of bias in local courts. Without a parallel federal court with which to compare treatment, the out of state litigant loses a crucial check on state courts in what would become monopoly control of jurisdiction without checks or balances.

Simply ignoring this discrimination cannot make it go away. Even though our nation has purged itself of many prejudices, only the most naive would believe that discrimination has disappeared. Modern technology, which has improved communications between localities, is also incapable of eliminating local favoritism or protecting out-of-state litigants from it. Contrary to this Committee's unsupported statement that "the melding of America has virtually eliminated this fear," the empirical evidence demonstrates that local bias against outsiders, in fact, exists to an alarmingly high degree. One such study indicates "that almost half (47 percent) of the attorneys citing local bias characterized it as 'important' or 'very important' to the forum decision . . . This evidence of fear of local bias in the minds of attorneys is substantially more prevalent than that revealed by previous research." Goldman, Diversity Jurisdiction and Local Bias: a Preliminary Empirical Enquiry, 9 J. Legal Stud. 93, 98–99 (1980). Judicial support for diversity jurisdiction is considerably higher in the rural south and midwest, where local bias is more likely to occur. Shapiro, Federal Diversity Jurisdiction: a Survey and a Proposal, 91 Harv. L. Rev. 317 (1977). In this study, 44.5 percent of the federal district judges surveyed would not support the abolition of diversity jurisdiction.

Bias is a very real concern today, even to the supporters of H.R. 6816. Their concern, however, when coupled with the restrictions imposed in H.R. 6816 results in a serious miscarriage of justice. H.R. 6816 creates a lower standard of justice for United States citizens in their own courts than the internationally recognized minimum standard. This bill, which bans U.S. citizens from their own federal courts in diversity cases, maintains diversity jurisdiction for aliens. The Department of State on August 9, 1982, stated in support of the bill: "an alien is entitled to certain internationally recognized minimum standards of justice [diversity jurisdiction being one of them]." This Committee is incorrectly asking Congress to support a bill creating a lower minimum standard of Justice for U.S. citizens in their own courts than for foreign citizens.

The essential nature of diversity jurisdiction for aliens only highlights the need for this avenue to federal courts for all people, including U.S. citizens who are the intended beneficiaries and taxpaying supporters of the federal courts. Any bill that excludes U.S. citizens from their own courts and allows aliens free access to the same courts is repugnant to the concept of American justice and this Committee's high regard for equal access to justice.

The minimal cost savings and reductions in the federal caseload do not justify the inequities imposed by H.R. 6816. The anticipated reduction of 25% of the federal caseload is not necessary or practical in light of other laws and bills, which enjoy the strong support of this Committee, that are designed to address the overburdened federal docket. Many members of this Committee and I worked hard in the 96th Congress for the passage of the 1978 Omnibus Judgeship bill, which created 152 new federal judgeships, thereby increasing the federal judiciary by one-third. It was my understanding that this bill, in lieu of the abolition of diversity jurisdiction, would resolve the federal docket problem. Yet, scarcely four years after the 33% increase in federal judgeships, we are asked again to eliminate one-fourth of the federal caseload by abolishing diversity jurisdiction. The impracti-

cality of this request is further highlighted by this Committee's strong support for H.R. 6978, the Bankruptcy Court Act of 1982, which is virtually assured of passage in this Congress. H.R. 6978 creates 227 article III bankruptcy judges with the authority to preside over any district court case. The bill, therefore, created an additional 227 new federal judges with the power to reduce the federal caseload.

The estimated savings of the bill, a mere 2% of the federal judicial budget, is not adequate rationale for eliminating 25% of the federal docket. This is particularly bad economics since the caseload is not eliminated, but is simply passed on to the states without any cost savings to our constituents as taxpayers. Although federal taxes will not be reduced by this bill, state taxes will most likely be increased as overburdened state and local governments try to meet the additional responsibility of deciding one-quarter of the federal caseload. The minimal reductions in cost and delay fail a traditional cost benefit analysis; they are neither practical nor economical, especially in light of this Committee's strong support for more appropriate alternatives.

My lack of enthusiasm for these arguments in support of the bill is greatly overshadowed by my concern over the detrimental results of the abolition of diversity jurisdiction on U.S. citizens. Bias is not the only serious problem facing the out-of-state litigant in state court; the practical limitations of state courts must not be discounted. H.R. 6816 will cause the immediate dismissal or remand of approximately 45,500 cases, or 25 percent of the federal caseload. This forces the parties into unprepared and already overburdened state courts where dockets are backlogged in some states for more than four years. An out of state plaintiff or defendant would most certainly be disadvantaged by having to prosecute his action in a rural county court with jury from that county and a judge who probably knows the local litigating party. Rural court locations are inconvenient for out-of-state witnesses, counsel, and the parties to reach and find adequate accommodations. In urban state courts litigants face more serious delays. The state judges in either setting are not as experienced or prepared to meet this additional unnecessary burden as are federal judges. Only federal judges have the ability to impliment policies of forum non conveniens and consolidation of related trials originally filed throughout the country. Only in federal court can litigants benefit from the Federal Rules of Evidence and the Federal Rules of Civil Procedure, including F.R.C.P. 22, a method of interpleader with substantive advantages over statutory interpleader in 28 U.S.C. section 2361 (1965).

The differing treatment received in federal and state courts demonstrates the important role of diversity jurisdiction, which goes far beyond the rights of the individual litigants, to advance society as a whole and the development of the laws of that society. Diversity jurisdiction is the key to federalism in the judicial branch. Through *Erie* v. *Tompkins*, 304 U.S. 64 (1938), the federal and state systems maintain a proper balance of authority, while ideas migrate freely between the two forums. Without this contribution, federal and state courts, judges, bars and laws will become isolated from each other. Isolating federal judges from state law will impair their ability and willingness to address state issues that are ancillary or pendant to federal questions.

It goes without saying that the general jurisdiction of the state courts over federal issues has been the source of much of the develop-

ment of federal law. It is, therefore, inconsistent to claim that the federal court funds should only be spent on federal issues, since state courts have always had the responsibility of adddressing federal issues. Federal judges have made and continue to make contributions to state law. In the words of one federal district judge:

> I think there is a place for diversity cases in our courts. Even though I may not have an opportunity to contribute to the substantive law, I am interested in finding out what the substantive law is in New York. I think that it is important that we give the people in our state, as well as people from other states, an opportunity to be heard in a federal court if they feel they will get a more just result.

Werker, Introduction, 1981 Bench Bar Conference of the Federal Bar Council. See, Shapiro, Federal Diversity Jurisdiction: a Survey and a Proposal, 91 Harv. L. 317, 325 (1977). Key to parallel court systems, which are unique not only in our time but in history as well, is the continued sharing of ideas between both systems. H.R. 6816 incorrectly and unnecessarily interpheres with this essential contribution and balance of power.

Blaming the federal backlog on diversity jurisdiction is a false over-simplification of the problems posed by our increasingly litigious society. The increased use of the federal courts indicates the high value our constituents place on diversity jurisdiction. There are many more appropriate ways of addressing the increased usage of federal courts than by wiping out a major necessary and useful access to the federal court system. Rather than transferring the problem to state courts, this Committee should search for a permanent cure to the increase in litigation. For example, arbitration and other forms of dispute resolution may be less expensive and more expedient alternatives to federal court litigation. Existing civil trials would consume less time if federal judges would apply existing rules, such as the sanctions in F.R.C.P. 37 for abuse of federal discovery rules. Finally, substantive laws, such as habeas corpus review, of state court decisions by federal courts, should be curtailed.

If necessary, diversity jurisdiction can be modified without being eliminated. One creative circuit recently demonstrated this point. The Sixth Circuit has expanded its interpretation of 28 U.S.C. section 1332 (c) (1966), which considers a defendant insurance company under a direct action statute to be a citizen in the state where the insured is a citizen. *Ford Motor Co.* v. *INA*, 669 F.2d 421 (6th Cir. 1982). The court, finding no difference between no-fault suits and litigation under direct action statutes, applied section 1332(c) to no-fault actions. Under this analysis, complete diversity does not exist in most no-fault cases. As a result, the Eastern District of Michigan has remanded over 100 cases to the state court and dismissed countless others under this decision. The use of diversity jurisdiction could also be limited to the more substantial cases by modifying the liberal policy allowing the aggregation of separate claims to meet the amount in controversy or by raising the required amount in controversy. The current amount of $10,000 was established in 1958, but today, based on the June 1982 Consumer Price Index, the 1958 figure is equal to $33,556. These restrictions provide a much less drastic or harmful approach to addressing the increase in federal litigation.

These remarks are based on my belief that diversity jurisdiction is a necessary protection for U.S. citizens and that adequate reasons for its abolition have not been demonstrated. As the new President of the American Bar Association, Mr. Morris Harrell, recently stated:

> Access to justice—whether by making legal services available to those who cannot afford lawyers, or by keeping the federal courts open to all legitimate disputes—is at the very foundation of our democratic system.

I believe that the members of this Committee would agree with Mr. Harrell in this assessment. Sixteen members of this Committee, however, have voted to remove the access to federal courts through diversity jurisdiction from American citizens for temporary reasons of expediency. I dissent from this decision and will continue my strong opposition to H.R. 6816.

HAROLD S. SAWYER,
Member of Congress.

○